

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JOHN EDWARD PREVOST, II
ADC #144749

PLAINTIFF

v. 4:12-cv-00529-KGB-JJV

KENNY DUNHAM, Assistant Jail
Administrator, Van Buren County Jail

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Kristine G. Baker. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form

of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. BACKGROUND

While detained in the Van Buren County Jail, Plaintiff, John Prevost, filed a *pro se* Complaint (Doc. No. 1) pursuant to 42 U.S.C. § 1983, alleging the Defendant violated his constitutional rights. Plaintiff did not pay the \$350.00 filing fee or file an Application to Proceed Without Prepayment of Fees and Affidavit (Application). On August 28, 2012, the Court ordered Plaintiff to either submit the \$350 filing fee or a proper Application within thirty days of the date of the Order. (Doc. No. 2). He was warned that failure to comply with the Order would result in the dismissal of his Complaint without prejudice. (*Id.*) On that date, the Clerk of the Court mailed a copy of the Order to Plaintiff. The thirty day period has long since past and Plaintiff failed to respond to the August 28 Order.

Rule 41(b) of the Federal Rules of Civil Procedure allows a district court to dismiss an action due to the plaintiff's failure to comply with any court order and, unless otherwise specified such a dismissal operates as an adjudication on the merits. *Brown v. Frey*, 806 F.2d 801, 803 (8th Cir. 1986). A court may so dismiss on its own initiative. *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962); *Brown*, 806 F.2d at 803. Plaintiff has failed to submit either the \$350 filing fee or a proper

Application. The Court finds that Plaintiff has failed to comply with the August 28 Order and Plaintiff's Complaint (Doc. No. 1) should be DISMISSED without prejudice.

II. CONCLUSION

IT IS, THEREFORE, RECOMMENDED THAT:

1. The Complaint (Doc. No. 1) be DISMISSED without prejudice.
2. The Court should certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from an Order adopting these recommendations and the accompanying Judgment would not be taken in good faith.

DATED this 17th day of October, 2012.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE